Boise Cascade Corporation *and* Local 900, United Paperworkers International Union. Case 1–CA–25456

September 28, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On May 8, 1990, Administrative Law Judge Robert A. Giannasi issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief. The General Counsel also filed exceptions and a brief in support.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Boise Casade Corporation, Rumford, Maine, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(a) and reletter subsequent paragraphs.

''(a) Prohibiting employees from wearing slashed IP pins and anti-Cianbro T-shirts and from displaying anti-Cianbro-BE&K stickers.''

2. Substitute the attached notice for that of the administrative law judge.

[1] In so modifying the Order, we grant the General Counsel's exceptions to conform par. 1(a) of the judge's recommended Order with the judge's corresponding conclusion of law.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT prohibit employees from wearing slashed IP pins and anti-Cianbro T-shirts and from displaying anti-Cianbro-BE&K stickers.

WE WILL NOT interfere with, restrain, or coerce employees by prohibiting them from wearing articles of clothing or pins or displaying stickers or other material with messages pertaining to the exercise of activities protected under Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights mentioned above.

BOISE CASCADE CORPORATION

Avrom Herbster, Esq., for the General Counsel.
John E. Krampf, Esq., of Philadelphia, Pennsylvania, for the Respondent.
Mark M. Brooks, Esq., of Nashville, Tennessee, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. This case was tried on November 30, 1989 in Boston, Massachusetts. The complaint alleges that Respondent violated Section 8(a)(1) of the Act by prohibiting employees from displaying certain stickers, buttons and T-shirts in the plant in April 1988. The Respondent filed an answer denying the essential allegations in the complaint. The parties have filed briefs which I have read and considered.

Based upon the entire record, including the testimony of the witnesses and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTIONAL MATTERS

Respondent is a national corporation engaged in the manufacture and distribution of paper products with an office and place of business in Rumford, Maine, where this dispute arose. In the course and conduct of its business, Respondent annually sells and ships, from its Rumford facility, products, goods, and materials valued in excess of $50,000 to points outside the State of Maine. Accordingly, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Charging Party (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The Union represents approximately 1100 to 1150 production and maintenance workers at the Respondent's Rumford mill. The parties have had a collective-bargaining relationship since the early 1960s. The contract that governed the parties' relationship through the relevant time period was effective for 3 years beginning on July 1, 1986.

The negotiations for the 1986–1989 agreement commenced in April 1986. From July 1, 1986, until September 14, 1986, the employees engaged in a strike. About 60 union members worked during the strike and Respondent hired about 342 replacements. During the strike there were incidents of picket line and strike misconduct. Some 40 employees, a number which included strikers and nonstrikers, were disciplined for their participation in these incidents. Four strikers were discharged, but all had their discharges subsequently changed to suspensions. It is uncontroverted that the strike caused negative feelings and animosity between strikers and those who crossed picket lines to work during the strike. To some extent this animosity continued at a diminishing level after the strike, in the form mostly of verbal exchanges and the use of the word ''scab'' to describe nonstrikers and replacements.

After the strike ended, the striking employees were recalled. About 700 were recalled immediately; the rest were recalled as vacancies arose. By April 1988, when the incidents at issue in this case took place, only 5 strikers had not been recalled and 220 replacements were still employed. Many of these replacements filled new positions created since the strike or vacated by retiring employees. In December 1989, the parties reached a new 6-year agreement effective as of July 1989. That agreement, as well as the previous one, covered all the Rumford employees including the replacements.

Shortly after the strike ended, in September 1986, William Peterson, the Respondent's supervisor of employee relations, met with Union President Donald Barker.[1] Peterson told Barker that, because of the negative feelings engendered by the strike, Respondent would not permit the wearing of T-shirts in the production area with the printed words ''strike'' or ''union goon'' across the front. These shirts had been worn by employees during the strike. The Respondent also banned procompany material which had been worn during the strike. One of these, a T-shirt, had the words ''still cares about Boise'' across the front, representing the word ''scab.'' Barker agreed to the ban of the ''strike'' and ''union goon'' T-shirts.

In June 1987, employees started wearing T-shirts with a picture of Respondent's logo which was an upright tree. On the T-shirt, the tree was broken and the words ''broken spirit'' were written across the top. Respondent banned these T-shirts. As a result, the Union filed two grievances and an unfair labor practice charge alleging that the ban was improper. The charge was deferred pending arbitration and both arbitrations were resolved in favor of Respondent.

Respondent has no written policy prohibiting the kinds of union or other insignia that can be worn at the Rumford mill. It has no written dress code and nothing in the applicable collective-bargaining agreement governs these matters. The Respondent does have a rule, however, which prohibits the ''posting of inflamatory or offensive material in the mill premises.'' An explanation of that rule states that this includes ''material which might be considered libelous, offensive or slanderous toward an individual, a group, or the Company'' and that which is ''intended to incite emotional reactions of hatred, group rebellion or riotous action.''

At this time, in June 1987, Peterson told Barker that Respondent would ban T-shirts or insignia from the production floor if their message was ''derogatory.'' Peterson testified that his policy was to ban material which was ''derogatory to the company, to our customers, that could have an adverse business impact on us with our customer client base or anything that could lead to an altercation between groups of our employees or groups of employees of contractors who did business with us.'' Despite this policy, the Respondent has permitted the wearing of pins and buttons, including union buttons, union steward buttons and a button promoting ''workers' memorial day.''

In the fall of 1987, the Union distributed bumper stickers to employees which it had obtained from a sister local (Local 14 of the Paperworkers) in Jay, Maine. Local 14 had struck International Paper Company, a competitor of Respondent, in the summer of 1987. The International Paper plant is located in Jay which is about 24 miles away from Rumford. The bumper stickers contained the words ''BE&K'' and ''Cianbro'' with diagonal slashes through them, the words ''no way'' next to them, and the words ''scab'' and ''strikebreaker'' written across the middle of the sticker. Next to the BE&K symbol was the drawing of a rat. Also available at this time were T-shirts, also obtained from Local 14, with the slashed ''Cianbro'' name together with the words ''no way'' and ''strikebreaker'' printed on them.

BE&K and Cianbro are nonunion firms which performed work for International Paper during the strike against it in Jay. These firms had also performed work for Respondent during the 1986 strike against it in Rumford. Respondent continued to utilize Cianbro employees at Rumford through 1988 but it did not use BE&K after the conclusion of the strike in September 1986. The strike against International Paper apparently continued through 1988.

Employee Ted Surette, a former striker and a long-time employee of Respondent, attached an anti-BK&E-Cianbro sticker to his lunch box beginning in the fall of 1987. It was openly displayed in his work area from that point until April 1988 without any untoward incident or objection from management or employees. On April 18, General Superintendent Neil Sorenson approached Surette and asked him to remove the sticker. Surette protested that he had displayed the sticker all winter, but Sorenson insisted that Surette remove it. Surette did so and did not thereafter display the sticker.[2]

That same day Surette notified Barker of Sorenson's ban. Barker in turn spoke about the incident with Marion Roglich,

[1] Peterson was based at corporate headquarters in Boise, Idaho, but had responsibilities over the Rumford mill which he visited on a regular basis.

[2] There is really no dispute over this confrontation. However, to the extent that there are any differences in the testimony of Surette and Sorenson on this or any other issue, I credit Surette who was much the more reliable witness. I was particularly unimpressed with Sorenson whose testimony was vague, rambling, and exaggerated. Indeed, he was such an unimpressive witness that I cannot credit his testimony on any issue in this case unless it is against interest.

who had been appointed supervisor of employee relations for the Rumford mill in March 1988. Roglich confirmed that the sticker would be prohibited as long as Cianbro worked on the site. A day or so later, Barker asked Roglich for a list of all contractors working on the site in order to conform to the rule announced by Roglich relating to materials dealing with outside contractors. Roglich replied that the policy had been changed to ban all derogatory insignia without regard to whether the contractor was on-site.[3]

Judith Billings, a former striker, had worn the anti-Cianbro T-shirt at the mill from time to time for about 6 months from late 1987 to April 1988. There is no evidence that Billings encountered any objections from Cianbro employees except once when she was given what she described as ''the beady eye.'' She was wearing the shirt on April 25 when she was approached by Sorenson and told to change her shirt. She complained that it contained nothing derogatory about the strike or the Respondent. Sorenson said that he did not allow such shirts in his area so she should change the shirt or talk to her supervisor about not working in his area. Billings changed her shirt and replaced it with one referring to Local 14.[4]

Off and on for a ''couple of weeks'' in late March and early April 1988, Ted Surette also wore a button or pin on his clothing which contained the letters ''IP'' with a slash across them and the words ''just say no.'' He wore the pin at work as did other employees. The employees had obtained this pin from Local 14, the same source that had provided the stickers and T-shirt which had been banned by Sorenson.

On April 19, Sorenson approached Surette and asked him to remove the IP pin. Sorenson said he would not ''have anything like that on his end of the mill any more.'' According to Sorenson, he told Surette, ''I thought we had taken care of this yesterday,'' referring to his conversation with Surette about the sticker the day before. Surette immediately removed the pin and has not worn it at work since that time.

Barker spoke to Roglich about Sorenson's ban of the IP pin. Roglich told Barker, according to his own testimony, that Respondent had a ''customer relationship'' with International Paper and, because of this, the IP pin ''would not be acceptable.'' A few days later, Barker spoke to Peterson who told Barker about production problems with having pins or buttons in the work area. However, Peterson said that Respondent would not object to the IP pins being worn in the mill.[5]

[3] Roglich denied making the above statement and he took the position that Respondent did not object to references to BK&E because that contractor did not work on-site. I found Barker to be a more credible witness than Roglich and therefore I believe that Roglich made the statements attributed to him by Barker.

[4] The above is based on the reliable and credible testimony of Billings. She also testified that she had only been spoken to twice by management officials about the T-shirt during the 6 months she had worn it. Once a maintenance supervisor told her she should take it off before she ''got into trouble.'' However, he did not order her to take off the shirt. The second time was when a John Shorb in the Human Resources Department told her he would appreciate it if she did not wear the shirt. She protested in the same manner as she did to Sorenson the next day, but obviously this was not viewed or taken as an order because Billings wore the shirt again. There is no evidence that either of these encounter—or even that with Sorenson on April 25—was caused by a complaint from a Cianbro employee or supervisor.

[5] The testimony of both Peterson and Roglich concerning their position on the IP pin was fuzzy. It appeared to me that they only grudgingly conceded that it could be worn. Roglich did not even state his approval until I questioned him at the conclusion of his testimony.

B. *Discussion and Analysis*

It is well settled that an employer may not prohibit employees from wearing union-related insignia or attire unless it demonstrates ''special circumstances'' showing that such prohibition is required to maintain discipline, safety or production. *Midstate Telephone Corp.*, 262 NLRB 1291, 1292 (1982), enf. denied 706 F.2d 401 (2d Cir. 1983). Absent discrimination—a factor not alleged or present here—this involves a balancing of competing interests, not an inquiry into the employer's motives. See *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 797–798, 801–803 (1945); *Southwestern Bell Telephone Co.*, 200 NLRB 667, 670 (1972). The Act's protection of employee rights extends to use of the word ''scab,'' a common and well-known reference to a person or firm who is nonunion or works during a strike. See *Southwestern Bell Telephone Co.*, 276 NLRB 1053 (1985); *Letter Carriers v. Austin*, 418 U.S. 264, 282–287 (1974); *Linn v. Plant Guard Workers*, 383 U.S. 53, 60–61 (1966).

Such messages may be prohibited and special circumstances shown where they have a disruptive influence on work or discipline. See *Southwestern Bell Telephone Co.*, 200 NLRB 667 (1972) (sweatshirts with ''Ma Bell is a Cheap Mother'' worn during contract negotiations found to be so profane and provocative toward employer as to adversely affect decorum and discipline); *United Aircraft Corp.*, 134 NLRB 1632, 1634 (1961) (prostrike pins worn 2 months after end of a bitter and violent strike found to promote disorder and further divisiveness between strikers and nonstrikers); *Reynolds Electric Co.*, 292 NLRB 947 (1989) (prohibition of slashed scab buttons worn within a month after the end of a bitter and violent strike found to be ''a reasonably precautionary measure'' under *United Aircraft*, supra). However, general, speculative, isolated or conclusory evidence of potential disruption does not amount to ''special circumstances.'' See *Government Employees*, 278 NLRB 378, 385 (1986); *Eckerd's Market*, 183 NLRB 337, 338 (1970); *Southwestern Bell Telephone*, supra, 276 NLRB 1053 fn. 2; *Midstate Telephone*, supra, 262 NLRB at 1291.

Respondent does not dispute that Sorenson's ban against employee Surette's wearing of a slashed IP button was an unlawful infringement of protected employee rights and that no special circumstances justified the ban. At the hearing Respondent conceded that Sorenson's ban went too far. By wearing the pin, which he had obtained from a sister local on strike against International Paper, another paper manufacturer in nearby Jay, Maine, Surette was making common cause with those employees in their dispute against International Paper. This type of activity is protected even though it relates to the working conditions of employees of another employer. See *Eastex Inc. v. NLRB*, 437 U.S. 556, 564–565 (1978). As Judge Learned Hand observed long ago, employees making common cause with fellow employees of another employer are engaged in protected concerted activity because, even though ''the immediate quarrel does not itself concern them,'' the solidarity thus established assures them, if their ''turn ever comes,'' of the support of those ''whom they are all then helping.'' *NLRB v. Peter Cailler Kohler Swiss Chocolates Co.*, 130 F.2d 503, 505–506 (2d Cir. 1942). Accordingly, I find that Sorenson's conduct in banning the IP pin was violative of Section 8(a)(1) of the Act.

The Respondent contends that the IP pin allegation should be dismissed because Sorenson's ban was promptly repudi-

ated (Br. 30). I disagree. Although Peterson apparently told Union President Barker a few days after the Sorenson ban that the pin could be worn, he used language which suggested that there might be safety problems with wearing the pin in the production area of the mill. In fact, uncontradicted testimony establishes that pins of all kinds were worn in the production area of the mill. Moreover, it was only at the hearing that Respondent's agreement to permit the IP pin to be worn was made clear. Respondent's answer had denied that the ban was unlawful and posited a safety defense. Before Peterson's conversation with Barker, Roglich had told Barker that Sorenson's ban was proper. Even at the hearing, the testimony of Peterson and Roglich revealed only a grudging admission that the IP pins could be worn. More importantly, no management official ever told Surette or any other employees that the pin could be worn. Sorenson, who issued the ban and who has authority over some 200 employees, never rescinded the ban or spoke to Surette about rescinding it. Surette never again wore the pin, thus confirming the continuing coercion of the ban. In these circumstances, I cannot find that the alleged repudiation was unambiguous, specific, timely, or adequately communicated to the employees. Nor did it assure employees that there would be no future interference with employee rights, particularly in view of the other prohibitions in this case. Thus, the alleged repudiation did not meet the Board's standards for effective repudiation set forth in *Passavant Memorial Hospital*, 237 NLRB 138 (1978).[6]

In addition, Sorenson prohibited employees from wearing T-shirts and stickers, also obtained from the Union's sister local, Local 14, which had struck International Paper. The T-shirts and stickers essentially protested the nonunion and strike replacement status of two subcontractors utilized by International Paper during the strike in Jay which was still in progress at the time of Sorenson's ban in April 1988. These subcontractors had also been utilized by Respondent during the 1986 strike against it, and one of them, Cianbro, was still performing work at the Rumford mill at the time of the ban.[7]

There is no doubt that, in wearing the T-shirt and displaying the sticker, employees Surette and Billings were making common cause with their brethren on strike against International Paper. The T-shirts and stickers were obtained from Local 14 in Jay. They were obviously prepared by Local 14 for use in supporting the strike at International Paper. They were worn and displayed by Rumford employees only after the beginning of the International Paper strike in the summer of 1987. Billings specifically testified that she bought her T-shirt to support the International Paper strike. While it may also may have been true, as Union President Barker testified, that ''we didn't appreciate nonunion contractors working at our mill and learning our jobs,'' this was not the only reason for the employees' use of the material.[8]

Indeed, the predominant purpose was to support the International Paper strike, as the evidence clearly shows. Not only were the Rumford employees supporting the strike of their fellow employees in Jay, but they were also protesting International Paper's use of nonunion companies during that strike. The Rumford employees did not protest against Cianbro from the end of the Rumford strike in September 1986 until the fall of 1987 even though Cianbro was working continuously at the Rumford mill during this period. BE&K did not even work at the mill after the strike. Thus, the use of the T-shirts and stickers was spawned by the contemporaneous strike at International Paper rather than anything that was happening or had happened at the Rumford mill and it was protected for the same reason as was the wearing of the IP pin which was banned at the same time. The Respondent apparently recognized this relationship because Sorenson banned the IP button as well as the antisubcontractor material. The ban was seemingly directed toward anything about the International Paper strike whether or not there was any reference to the disfavored subcontractors. Accordingly, Sorenson's ban against wearing the T-shirts and displaying the stickers was presumptively unlawful and could only be legitimized if Respondent was able to show special circumstances which would justify the ban.[9]

Before turning to Respondent's special circumstances contention, I must place Sorenson's ban in context. This case does not involve the legality of other insignia displayed in the mill, some of which was banned without objection. Immediately after the end of the Rumford strike in September 1986, Respondent banned certain T-shirts which, in its view, tended to prolong the hard feelings engendered by the strike. The Union accepted this ban which is not at issue here. Likewise not at issue here is the June 1987 prohibition against the ''broken spirit'' T-shirts which was upheld by an arbitrator.[10] By the same token, Respondent did permit the wearing of certain union buttons, which, in its view, did not disparage it, other employees or subcontractors. For example, Respondent permitted Billings to wear a ''Local 14'' T-shirt immediately after she was prohibited from wearing the anti-Cianbro shirt.

Nor does this case involve the validity of Respondent's oral rule announced by Peterson in about June 1987 prohibiting, as a general matter, certain derogatory messages. The question here involves application of the rule to the facts in

[6] Respondent cites *Raysel-IDE, Inc.*, 284 NLRB 879 (1987), in support of its position. However, that case, which upheld a repudiation and dismissal of a complaint allegation involving the ban of union buttons, is distinguishable. There the supervisor who banned the buttons recanted 24 hours later in a conversation with the very employee who had been the subject of the ban. Here Sorenson never recanted to Surette. Moreover, in *Raysel*, the offended employee and others resumed wearing the buttons after the recantation. Here neither Surette nor any other employee wore the IP button again.

[7] Respondent concededly had no objection to the protest—including the slashed name and the ''scab'' and ''strikebreaker'' references—against BE&K because the latter had no employees in the mill in April 1988.

[8] Even if this had been the only purpose for the employees' protest, it would have been protected since it was addressed to protecting unit work.

[9] Respondent contends, as an initial matter, that wearing the shirts and displaying the stickers was not protected concerted activity because it served ''only to harass, intimidate or disparage other employees or the employer.'' (Br. 12, emphasis added). There is no evidence to support the Respondent's contention and, as indicated above, the evidence shows a legitimate basis for the employees'activity. The slash and the words ''no way,'' ''scab'' and ''strikebreaker'' in the context of this case meant opposition to the use of nonunion firms in the International Paper strike. To the extent that this material referred to one of Respondent's subcontractors, it was because Respondent used the same firm which International Paper used during that strike. No anti-Cianbro material was displayed before the International Paper strike. And there was no effort to harass or disparage Cianbro employees. Nor was there any evidence of any effort to force Cianbro out of Rumford.

[10] Actually this ban would have posed a close question under Board law, particularly in view of the time which had elapsed since the end of the Rumford strike. Compare the views of the Board and the circuit court in *Midstate Telephone*, supra.

this case. More precisely, what is at issue here is the validity of Sorenson's prohibition of the anti-Cianbro T-shirts and anti-BE&K and Cianbro stickers.

Also significant here is that the prohibited T-shirt and stickers were actually worn and displayed for 6 months before Sorenson's ban. Whatever the level of continuing animosity between former strikers and replacements and its relevance to the Sorenson ban in April 1988 (discussed infra), some 19 months had passed since the end of the Rumford strike. Thus, the Respondent had an opportunity to deal with any threats to discipline or production posed by the poststrike animosity and, more particularly, by the open use of the banned T-shirts and stickers for the 6 months they had been worn or displayed at the mill. These facts distinguish the instant case from that line of cases cited by Respondent in support of its argument that an employer need not wait until resentment piles up and a storm breaks before banning allegedly disruptive material (Br. 20). Thus, when an employer immediately bans material, particularly after a bitter strike, the employer, and ultimately the trier of fact, may reasonably make inferences about possible future disruptions which may have been averted by banning the material. Here, however, where 19 months have passed since the allegedly disruptive strike, and, where the disfavored material has been openly displayed for 6 months, there is no need to speculate about or infer possible future disruption. It can be measured based on actual experience.

Turning first to the most important point, I must consider whether the T-shirts and stickers caused any problems during the 6 months they were worn and displayed before the ban. The answer on this record is that there were no discernible problems. First of all, there was no evidence of any discipline as a result of the use of the T-shirts and stickers or as a result of any dispute between Respondent's employees and those of Cianbro, the only subcontractor mentioned in the banned material that was working at the mill after the 1986 strike. Respondent's witnesses could not point with specificity to any incidents between employees of Cianbro and Respondent. Roglich testified that he knew of no incidents of this kind. Peterson likewise was unable to specify any incidents although he made a vague reference to a hearsay report from an engineer, in the spring of 1988, involving ''animosity towards Cianbro.'' However, Peterson could not recall anything more about the report and there is no evidence that he even investigated the matter. Sorenson also gave vague and unspecified testimony about Cianbro employees complaining that they were not being ''treated well.'' But there was no elaboration and no suggestion that this involved disputes with former strikers or had anything to do with union considerations. Indeed, Sorenson admitted that he received no reports from any Cianbro employee that there were any problems with the sticker and only one about the T-shirt. Accordingly to Sorenson, a Cianbro employee asked him, at an unspecified time, why he allowed ''offensive graffiti on people in the mill while we're working here.'' Sorenson testified that he told the employee, ''I don't allow it.'' Even assuming the truth of this testimony, despite my view that Sorenson was an unreliable witness, there is no evidence that Sorenson did anything about this report. Sorenson also testified that he received a report about the T-shirt one day before he confronted Billings about it. But he could not remember anything about the report. In neither case was there any demonstrable effect on discipline or interference with work. In these circumstances, it is clear that the stickers and the T-shirts caused no significant problems during the time they were worn and displayed which would have impacted on discipline or production.

Respondent's special circumstances defense is based on its contention that animosity between former strikers and replacements persisted at a high level well after the end of the strike against it in September 1986, at least until the Sorenson ban in April 1988, and that this animosity justified a ban against the T-shirts and the stickers. I do not find the Respondent's defense persuasive and its evidence is insufficient to overcome the presumptive invalidity of the Sorenson ban.

As I have indicated, Respondent's evidence does not directly address any problems with Cianbro or any other employees over the sticker and T-shirt which were displayed and worn for 6 months without serious incident. Nor does it show that the T-shirts or stickers caused or would cause disciplinary or production problems. Whatever animosity lingered from the 1986 strike at the time of the Sorenson ban in April 1988, it was much attenuated from and only tangentially related to the International Paper strike which spawned the banned T-shirts and stickers. And it did not manifest itself in any relevant problems of discipline or production connected with the T-shirts and stickers.

Respondent's evidence is insufficient to show continuing strike animosity relevant to the banned material which would impact on discipline or production. No rank and file employee testified about any particular incidents caused by continuing animosity. The testimony of Peterson and Sorenson on this point was general and vague. Peterson testified about only one incident which could be described with any specificity. Apparently, in the spring of 1987, an employee got into a ''shouting match'' with the employee of a subcontractor—not Cianbro or BE&K—because the latter employee's wife had come to work for Respondent. The association with the strike or union considerations was unclear, but the employee was suspended for 15 days and had no further problems. Significantly, this incident took place about 1 year before Sorenson's ban. According to Sorenson, sometime in late 1987, an employee complained during a meeting about not liking to work near a ''scab.'' There is no evidence that the employee was disciplined for the statement and, of course, it also took place well before Sorenson's ban. Roglich, who joined Respondent in March 1988, could testify only about one incident: the discipline of employee Thomas Hines who allegedly threatened to fight three replacement workers after calling them scabs. This took place in March 1988, but there is no evidence as to the context of this incident. No documentary evidence was submitted even though the matter was the subject of a union grievance which resulted in a settlement of some kind. In addition, there was testimony that graffiti referring to scabs was painted on locker room and rest room walls in the period after the strike and continuing until the time of the hearing. No one was disciplined for these acts, probably because the perpetrators could not be found, and the Respondent had the graffiti removed or painted over. Despite these obvious and objectionable acts of vandalism, Respondent was unable to point to

any specific problems of discipline or production caused by them.[11]

Both Peterson and Supervisor of Plant Protection Richard Rinaldo testified that animosity between former strikers and nonstrikers diminished as time went on. This is also supported by the paucity of specific incidents and disciplinary problems which could arguably be attributed to the strike, particularly as time wore on.

Thus, any disciplinary problems attributed to lingering animosity from the 1986 strike were much diminished by April 1988. Those few which could be specified were isolated, unrelated to Cianbro or BE&K, and could not reasonably be relied on to ban the T-shirts and stickers prohibited in April 1988. Accordingly, the Respondent has not established that the ban was warranted by special circumstances relating to discipline or production at the Rumford mill.

At the hearing Respondent submitted three packets of documents for admission into evidence as reflecting its state of mind in banning the T-shirts and stickers. These included (1) a number of newspaper articles describing the strike, incidents of violence and the continuing hard feelings because of the strike which existed in June 1987, the date of the latest newspaper articles in the packet; (2) television tapes discussing the same hard feelings during programs which aired in the spring of 1987; and (3) a group of affidavits submitted to Respondent by employees concerning incidents of violence and vandalism, mostly outside the mill, on the parking lot, at homes or elsewhere in Rumford and its environs. Peterson testified that he relied on items (1) and (2) before he promulgated his oral rule in June 1987 and Rinaldo testified that he received the affidavits and investigated the incidents reported therein without much success in identifying the perpetrators. There is no evidence that any of the reported incidents resulted in discipline or prosecution. The General Counsel and Charging Party objected to the introduction of this material into evidence. I reserved ruling on the admissibility of this material until I received the briefs in this case.

Respondent concedes the hearsay nature of the material because it took the position both at the hearing and in its brief that it was not offering the material for its truth or the truth of the statements made therein. However it does want the material admitted to show Respondent's state of mind. Respondent does not explain how Respondent's state of mind is relevant to the issues in this case. In 8(a)(1) cases of this kind motive is not a controlling element. See *NLRB v. Burnup & Sims*, 379 U.S. 21, 22–23 (1964); *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1053, 1077–1078 (1st Cir. 1981); *Waco, Inc.*, 273 NLRB 746, 748 (1984). More specifically, the issue in this type of case involves a balancing of competing interests to determine whether the employer's interests outweigh employee interests. See cases cited above. This requires a consideration of objective not subjective evidence to determine whether Respondent's ban is reasonable in all the circumstances. Accordingly, I do not believe the proffered material is relevant to the issues in this case.

However, even if I were to consider the proffered evidence, I would not find that it changes my view that Respondent has failed to show special circumstances to support the ban in this case. The proffered evidence is not particularly reliable and is entitled to very little weight. The newspaper articles and television tapes relate to circumstances existing in June 1987, some 10 months before the Sorenson ban. The affidavits show a diminishing number of incidents from the end of the strike in September 1986 to the present. Only five incidents were reported for the 4-month period from January through April 1988. They involved someone trying to run employees down in the parking lot, flat tires, scratches on a car, and broken windows at an employee's home. There is no evidence that the perpetrators of these acts were identified, much less that the incidents were strike-related. They are so unreliable as to be virtually useless in deciding the issues in this case. Nor is there any evidence that Sorenson relied on the affidavits or newspaper articles and television tapes before imposing his ban.

Respondent cites a number of cases in support of its special circumstances defense. All are distinguishable. In both *United Aircraft*, supra, and *Reynolds Electric*, supra, the banned insignia perpetuated the divisiveness of a recent (within one or two months of the ban) bitter and violent strike and the insignia was banned shortly after it was worn. Here, the banned insignia has little or nothing to do with the most recent strike which ended some 19 months before the ban. It dealt with another strike against another employer who was actually a competitor of Respondent. And, unlike in the cited cases, the prohibited material in this case was actually worn and displayed for 6 months before being banned without significant incidents or complaints from the allegedly offended group. The insignia here was not profane or disparaging of Respondent such as the Ma Bell sweatshirt in Southwestern Bell, supra. Nor would the facts herein have come within the Second Circuit's rationale in denying enforcement of *Midstate Telephone Corp.*, supra. In that case the cracked logo T-shirts were viewed as disparaging and a continuation of a strike which had ended only 3 months before. 706 F.2d at 404. Indeed, the Respondent in this case was permitted to ban a T-shirt whose message was similar to that in Midstate Telephone about 10 months before the Sorenson ban which is at issue here.

In sum, I find that Respondent has not shown special circumstances which were sufficiently related to or would support the ban of T-shirts and stickers whose message was protected activity aimed at making common cause with employees on strike at a nearby location against another employer in the same industry. Thus, Respondent's ban against wearing and displaying the anti-BE&K and Cianbro material was violative of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. By prohibiting employees from wearing slashed IP pins and anti-Cianbro T-shirts and from displaying anti-Cianbro-BE&K stickers, the Respondent has violated Section 8(a)(1) of the Act.

2. The above violations constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[11] Sorenson testified about seeing certain graffiti and fights related to it. But I found this testimony exaggerated and unreliable. In any event, Sorenson conceded that he had not disciplined anyone for this alleged misconduct, and Roglich testified that if such misconduct had occured the offending employees would have been disciplined.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that Respondent be ordered to cease and desist and post an appropriate notice.

On the foregoing findings of fact and conclusions of law, and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Boise Cascade Corporation, it officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Prohibiting employees from wearing articles of clothing or pins or displaying stickers or other material with messages pertaining to the exercise of activities protected under Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its mill in Rumford, Maine, copies of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''